



ENAR Shadow Report 2005

Racism in Ireland

Catherine Lynch

Contents Table

I. Introduction	4
II. Political and Legislative Developments	5
II.i Anti discrimination	5
II.ii Migration, family reunion and asylum policies	6
II.iii Racism as a crime	8
II.iv Counter Terrorism.....	9
III. Communities vulnerable to racism	10
IV. Manifestations of racism and religious discrimination	13
IV.i Employment	13
IV.ii Housing	15
IV.iii Education.....	16
IV.iv Health	18
IV.v Policing and racial profiling.....	20
IV.vi Racist violence and crime.....	22
IV.vii Access to goods and services in the public and private sector	23
IV.viii Media, including the Internet.....	24
V. Assessing the response	26
V.i Anti discrimination	26
V.ii Racist violence and racist crime	28
V.iii Counter-terrorism and protection of human rights	29
V.iv Integration and social inclusion of ethnic and religious minorities	30
VI. Conclusion.....	32
VII. Bibliography.....	34
ANNEX: Overall Assessment of Directive 2000/43/EC	37

Abbreviations

CEDAW	Committee for the Elimination of Discrimination Against Women
CERD	Committee for the Elimination of All Forms of Racial Discrimination
CPA	Combat Poverty Agency
CSO	Central Statistics Office
DEIS	Delivering Equality of Opportunity in Education
ECHR	European Convention on Human Rights
EEA	European Economic Area
ELO	Ethnic Liaison Officers
GNIB	Garda National Immigration Bureau
GP	General Practitioner
HRC	Habitual Residency Condition
HSE	Health Service Executive
ICCL	Irish Council for Civil Liberties
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICI	Immigrant Council of Ireland
IHRC	Irish Human Rights Commission
INTO	Irish National Teachers' Organisation
IRC	Irish Refugee Council
MRCI	Migrants' Rights Centre Ireland
NCCA	National Council for Curriculum Assessment
NCCRI	National Consultative Committee on Racism and Interculturalism
NPAR	National Action Plan Against Racism
NTACC	National Traveller Education Consultative Committee
NUJ	National Union of Journalists
PPF	Programme for Prosperity and Fairness
RIA	Reception and Integration Agency
VEC	Vocational Education Committee

I. Introduction

Ireland is a multi-ethnic society with ethnic diversity increasing significantly over the past ten years through immigration. While there has long been racism in Ireland, it is in the context of recent immigration that debate on racism has come to the fore. This report demonstrates that racism is becoming increasingly evident across all sectors of society and impacting significantly on the lives of Black and minority ethnic groups. There has long been a denial of the existence of racism in Ireland but recent years have seen a recognition that it does exist and the emergence of anti-racism initiatives. However, as positive measures are put in place by government, they are being undermined by contradictory legislation and policy such as that in the area of immigration.

2005 was a significant year in Ireland in terms of anti-racism. The government launched the National Action Plan Against Racism and submitted its first national report to the Committee on the Elimination of All Forms of Racial Discrimination (CERD). The observations and recommendations from CERD provide a key tool with which to reflect on racism in Ireland today and assess the Government's response.

Section II provides an overview of political and legislative developments in Ireland in 2005 in the areas of anti discrimination and migration including family reunion and asylum policies. It considers developments to address racism as a crime and other measures on countering terrorism that impact negatively on Black and minority ethnic groups, particularly the practice of racial profiling. Section III provides information and data on communities which are vulnerable to racism in Ireland. Manifestations of racism and religious discrimination are outlined in Section IV focusing on key problems in the areas of employment, housing, education, health, policing and racial profiling, racist violence and crime, access to goods and services and the media.

The report proceeds by assessing the Government's response to the problems encountered in light of developments in 2005 and European and international commitments in the areas of anti discrimination, racist violence and racist crime, counter-terrorism and protection of human rights and the integration and social inclusion of ethnic and religious minorities. Presenting the views of civil society and anti-racism NGOs, it identifies gaps in existing protections. The report concludes by highlighting particularly critical developments in 2005 and reflecting on the significance of civil society responses and contributions.

II. Political and Legislative Developments

This section provides an update of the political and legislative developments in 2005 which impact on the struggle against racism. It focuses on the developments relating to the areas anti-discrimination, migration, racism as a crime and countering terrorism.

II.i Anti discrimination

As the *2004 Shadow Report* explains, the Equality Act was signed into law on 18 July 2004. The Act amends a number of provisions of the Employment Equality Act 1998 and the Equal Status Act 2000 to give effect to Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of 'racial' or ethnic origin; Council directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation; and Directive 2000/73/EC of the European Parliament and of the Council, amending Council Directive 76/20/EEC on the implementation of the principle of equal treatment for men and women. There has been a mixed response to the Act with a number of NGOs expressing disappointment with how the Directives have been implemented.

The Irish Government submitted its first National Report under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) in January 2005. The report was considered by the Committee on the Elimination of Racial Discrimination (CERD) at its 66th Session on 2 and 3 March 2006. This was a key benchmark in Irish history in terms of commitments to the struggle against racism at an international level. However, an NGO Alliance described the Report as reflecting an aspiration rather than the reality of racism in Ireland¹.

The Government launched the National Action Plan Against Racism (NPAR) on 27 January 2005 following commitments made at the World Conference Against Racism in Durban, 2000. The NPAR, *Planning for Diversity*, aims to provide strategic direction to combating racism and developing a more inclusive, intercultural society and emphasises the development of reasonable and common sense measures throughout. It is underpinned by an intercultural framework built around protection, inclusion, provision, recognition and participation. The NPAR is overseen by a Strategic Monitoring Group and is supported by the Department of Justice, Equality and Law Reform.

In 1995 the government published the Report of the Traveller Taskforce. Ten years later, the Taskforce published its second report on the implementation or

¹ NGO Alliance, *NGO Alliance Shadow Report In Response to the Irish Government's First Report to CERD under the United Nations International Convention on the Elimination of All Forms of Racial Discrimination* (Dublin: NGO Alliance, 2004)

lack thereof, of the recommendations from the first report in 1995. The Report observes that despite some progress being achieved, Travellers continue to have lower life expectancy, lower educational qualifications and, in many cases, unacceptable accommodation².

The position of women from minority ethnic groups was highlighted in observations of Committee for the Elimination of all forms of Racial Discrimination (CERD) and Committee for the Elimination of Discrimination Against Women (CEDAW), to which Ireland also reported in 2005. A number of instruments were developed around other equality issues which potentially impact on members of Black and minority ethnic groups experiencing multiple forms of discrimination. These include the Disability Act 2005 and the request that the Oireachtas Committee on the Constitution consider the question of same sex and non marital relationships in the context of family reunion.

II.ii Migration, family reunion and asylum policies

The Irish Nationality and Citizenship Act 2004 came into effect on 1st January 2005. The Act changes the law so that children born to non-Irish national parents are no longer entitled to automatic citizenship³. A system was introduced to regularise the situation of Irish children and their non-EU national family members following a Supreme Court ruling that neither their parents nor siblings were entitled to residency, as had previously been the practice. By September 2005, 10 600 parents of the 18 000 parents who applied for residency were granted permission to remain for two years. However, the system comes with stringent conditions. Applicants were required to make every effort to become financially independent and accept there is no entitlement to family reunification⁴.

A discussion document on immigration and residence in Ireland was launched in April 2005. The document outlines policy proposals for an Immigration and Residence Bill. NGOs were invited to make submissions to Government on the document. The Immigration and Residence Bill is expected to be published in 2006.

The Employment Permits Bill 2005 puts the previously administrative arrangements on a legislative basis. However, it falls far short of many NGO hopes and recommendations that the system be overhauled. NGOs have advised that the work permit system is resulting in a form of bonded labour whereby employees are bound to their employer as the permit belongs to the

² Second Implementation Report on the Task Force on Travellers (Dublin: Government Publications, 2005) p. 6.

³ Further discussion on the Irish Nationality and Citizenship Act can be found in the 2004 Shadow Report.

⁴ NCCRI, 'E-bulletin September 2005', www.nccri.ie/newssept2005.html, accessed 8 March 2006.

employer. CERD had encouraged that the Government review the work permit system and consider issuing permits to employees⁵.

The Social Welfare (Miscellaneous Provisions) Act 2004 introduced a 'habitual residency condition (HRC)' which restricts certain social welfare benefits to those who have been resident in the country for two years⁶. The work of migrant's organisations since its introduction demonstrates that the HRC is serving to exacerbate the problems facing already vulnerable communities in Irish society, those groups who the social welfare system should be focused on protecting⁷.

New arrangements around non-EEA students access to employment were introduced on 22 December 2004 meaning that from 18 April 2005 new students granted permission to remain in the State are only permitted to work if they are attending a full-time course of at least one year's duration leading to a qualification recognised by the Minister for Education and Law Reform. This reflects a step back from previous changes made to arrangements for students' access to employment in 2001. As the majority of students affected by this are Chinese, the NGO Alliance is concerned that this results in a targeting of this nationality⁸.

Terms around family reunion remain poor both for refugees and migrants, particularly migrants working through the work permit scheme. Irish nationals are also not guaranteed family reunification. There is no right to family reunification in Irish law, people may apply for reunification to be considered after fulfilling specified criteria. However, family reunification is granted at the discretion of the Minister for Justice. Non-EU parents of Irish children who were placed in a limbo situation following a Supreme Court ruling that meant they were not entitled to residency were required to sign away any right to family reunification in their application for residency⁹.

The Irish Human Rights Commission (IHRC) describes the lack of any legal right to family reunion for Irish citizens as a 'lacuna' and of concern given the increasing diversity of Irish citizens. It notes that the system seems to be ad hoc and the system by which decisions are made lacks transparency¹⁰. An All Party Oireachtas Committee on the Constitution was also asked to examine the

⁵ Concluding Observations on Ireland, Report of the Committee for the Elimination of All Forms of Racial Discrimination, (CERD, 10 March 2005) CERD/C/IRL/CO/2 at para. 14.

⁶ While introduced in the context of EU Ascension, the HRC impacts on a number of groups including asylum seekers. Asylum seekers who are resident in the country less than two years and who would previously have been entitled to certain welfare payments such as child benefit, find they no longer have that entitlement.

⁷ Migrant Rights Centre Ireland, *Submission to the Immigration and Residence Discussion Document* (Dublin: Migrants Rights Centre, July 2005), 26, available at <http://www.mrci.ie/campaign/submission05/submission.doc>, accessed 2 March 2006

⁸ NGO Alliance, *NGO Alliance Briefing December 2004-February 2005* (Dublin: NGO Alliance, March 2005).

⁹ NCCRI, 'E-Bulletin September 2005', www.nccri.ie/newssept2005.html, accessed 8 March 2006

¹⁰ Human Rights Commission, *Position Paper on Family Reunion* (Dublin: Human Rights Commission, October 2005).

question of non-marital and same sex couples in the context of family reunification.

2005 saw changes to asylum procedures in the name of a speedier asylum process. A prioritisation of orders were introduced for asylum seekers from specified countries which have been deemed 'safe countries' by the Minister for Justice, including Romania, Croatia, Bulgaria and South Africa¹¹. Though not listed as a safe country, applications from Nigeria have also been prioritised. This move has received much criticism from NGOs. NGOs have also highlighted unacceptable conditions of detention for asylum seekers and undocumented migrants awaiting deportation, calling on the government to bring to an end the practice of holding immigration detainees in prisons¹². The government has also been criticised for the manner in which deportations are carried out.

II.iii Racism as a crime

Racist crime is primarily dealt with through a range of legislation including Criminal Justice (Public Order Act) 1994, the Non-Fatal Offences Against the Person Act 1997, the Criminal Damages Act 1991 and the Prohibition of Incitement to Hatred Act 1989. There is no provision for aggravated sentencing on the ground of racism in Irish law and the Incitement to Hatred Act has long been considered ineffective. A committee established under the NPAR has commissioned research into effective hate crime legislation which is due to be completed by June 2006.

As those responsible for protecting human rights and recording racist crime, it is critical that racism within the police force, An Garda Síochána¹³, be monitored. An Garda Síochána commissioned a Human Rights Audit of the service which it published and made available to the public on 31 March 2005. The Report confirms the existence of institutional racism within the police force. An Garda Síochána has drawn up an Action Plan to implement the recommendations arising from the report. The passing of An Garda Síochána Act 2005 allowed for the establishment of a Garda Ombudsman Commission which is expected to commence its duties early in 2007.

¹¹ In February 2005 the Office of Refugee Applications Commissioner (ORAC) reported that under section 12(1) of the Refugee Act (as amended), the Minister may give a direction to the Commissioner to give priority to certain classes of applications. The Minister has issued prioritisation directions that apply to persons who are nationals of, or have a right of residence in, the following countries: Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Nigeria, Poland, Romania, Slovakia, Slovenia and South Africa. www.orac.ie, accessed 12 March 2006

¹² Kelly, Mark, *Immigration-related detention in Ireland* (Dublin: Human Rights Consultants, November 2005).

¹³ An Garda Síochána, meaning 'guardians of the peace' in the Irish language, is the national police force in Ireland. Other terms for the police include Garda (police, singular) and Gardaí (police, plural).

II.iv Counter Terrorism

Amnesty Ireland and the Irish Council for Civil Liberties (ICCL) are two lead organisations that have cautioned around the Criminal Justice (Terrorist Offences) Act 2002 and its application. The question of countering terror is having an impact on immigrants also through the negative slant it is giving to other areas of policy and legislation. The *Immigration and Residence Discussion Document* is clearly security conscious at the expense of other more inclusive measures.

In recent years the powers of the Gardaí have been increased in the area of immigration¹⁴. These developments, combined with the recognised, institutional racism within the Gardaí give rise to serious concerns around racial profiling. The CERD recommends a review of security procedures and practice at entry points to ensure they are carried out in a non-discriminatory manner. It invites the State to include data on the number of complaints against members of the Gardaí concerning discriminatory treatment and decisions made.

¹⁴ Including Immigration Act 2004.

III. Communities vulnerable to racism

Ireland is a multi-ethnic society with ethnic diversity increasing significantly over the past ten years through immigration. Many Black and minority ethnic groups in Irish society are vulnerable to racism. These communities include Travellers, the Jewish community, the Chinese community, Black-Irish and other long standing minority ethnic communities as well as more recently established communities from the growing immigrant population. There is also a growing religious diversity in Ireland. A recent study by the Central Statistics Office (CSO) shows that persons from 'other ethnic backgrounds' reported the highest rate of discrimination with 31% having experienced discrimination in the previous two years¹⁵.

It is difficult to paint an accurate picture of the ethnic diversity in Irish society due to a lack of data available. This picture can in part be pieced together through a range of data including census figures and immigration statistics.

The 2002 census is the most comprehensive source of information on diversity in Ireland but is limited in terms of black and minority ethnic groups. However, it did collect data on religious belief, nationality, country of birth and membership of the Traveller community.

According to the 2002 census there were 23 681 Travellers and 224 261 non-Irish people usually resident in Ireland, representing approximately 160 nationalities. Of these, 133 436 are EU nationals, 23 105 are nationals of other European countries, 20 981 are African and 21 770 are Asian. The majority of the remainder indicated that they are from North America and Australia. 2 340 indicated that they were of multiple nationalities. In 48 412 cases nationality was not stated. Overall the census indicates that 5.8% of the population are non-Irish nationals, almost half of whom are UK nationals.

The next census will be carried out in 2006 and will include a question on ethnicity. The CSO carried out a pilot survey on 25 April 2004 and report that the pilot survey indicated a high level of acceptance of the question from the public¹⁶.

The 2002 Census indicates that there are 23 681 Irish Travellers, representing approximately 0.65% of the population. Traveller organisations estimate that there was an undercount of 20% in the 2002 census. The 2002 census figures demonstrate that Travellers experience disadvantage in many aspects of their lives including accommodation, education and employment. The figures

¹⁵ Central Statistics Office, *Quarterly National Household Survey. Equality. Quarter 4 2004* (Dublin: Central Statistics Office, August 2005).

¹⁶ The categories for the question were developed in consultation with the National Consultative Committee on Racism and Interculturalism (NCCRI), Pavee Point, the Equality Authority and relevant government departments.

measure unemployment¹⁷ among Traveller men at 73%, whereas the unemployment for men in the general population is 9.4%. For Traveller women, unemployment is at 63% compared to 8% of the women generally¹⁸.

The State acknowledges a distinct Traveller culture, that Travellers experience racism and provides protection to Travellers against discrimination through the equality legislation. However, it does not recognise Travellers as an ethnic group. The CERD encourages the State to work “more concretely towards recognising the Traveller community as an ethnic group.”¹⁹

The Roma community has been represented in Ireland for many years. The community has grown considerably however with the recent wave of immigration since the mid 1990’s. It is impossible to say accurately how many Roma are in Ireland as most of the data that has been collected to date has recorded nationality rather than ethnicity.

CSO population and migration estimates indicate a net migration of 53 400 people in Ireland in 2005²⁰. Out migration was estimated at 16 600 while inward migration was estimated at 70 000.

A total of 4 323 new asylum applications were received in 2005, a 9% drop from the 2004 total of 4 766. 966 asylum seekers were recognised as refugees in 2005, 455 at first instance and 511 on appeal²¹. The majority of asylum seekers to Ireland in 2005 are from Nigeria, Romania, Somalia, Sudan and Iran.

EU migration counts for a significant amount of the immigration into Ireland particularly from the Ascension countries. 38% of immigrants in the period April 2004 to April 2005 were nationals of Accession States which joined the EU on 1 May 2004. 17% of immigrants are from Poland and 9% are from Lithuania.

26 324 work permits were issued in 2005, 7 354 of which were new permits and 18 970 renewals. As in 2004 this reflects a significant drop from the figure of 2003 and can be explained by the fact that those from Accession States no longer need visas to work in Ireland.

Though Ireland continues to be a predominantly Christian, largely Catholic country, there is evidence of increasingly religious diversity within the population. The 2002 census names 19 religions that are represented in Ireland today. Interesting developments include the first increase in the Jewish population since

¹⁷ According to the self-assessed principal economic status question on the census form.

¹⁸ NGO Alliance, *NGO Alliance Shadow Report in Response to the Irish Government’s First National Report to CERD under the United Nations International Convention on the Elimination of All Forms of Racial Discrimination*, (Dublin: NGO Alliance, 2004).

¹⁹ Concluding Observations on Ireland, Report of the Committee for the Elimination of All Forms of Racial Discrimination, (CERD, 10 March 2005) CERD/C/IRL/CO/2 at para. 20.

²⁰ FÁS, *Irish Labour Market Review 2005* (Dublin: FÁS, 2006).

²¹ Irish Refugee Council 2006 *Statistical Review 2005*.

the 1961 Census, reaching 1 790 in 2002. There is also a growing Muslim community, growing from 3 875 in 1991 to the latest available figure of 19 147 in 2002. The Christian community is also diverse with the number of religions represented increasing.

Within minorities there are also minorities. As data collection mechanisms develop, it is essential that data be disaggregated to establish a comprehensive picture of black and minority ethnic communities. There are some provisions for the disaggregating data by gender across categories such as religious belief and membership of the Traveller community. Concerned by instances of multiple discrimination, CERD encourage the State to take measures regarding the special needs of women belong to minority and other vulnerable groups. Disaggregated data is necessary in order to identify and respond to the particular experiences of minorities within minorities and those experiencing multiple forms of discrimination.

IV. Manifestations of racism and religious discrimination

This section attempts to provide an overview of the key areas where racism and discrimination are experienced in Ireland. Despite a lack of statistical data, evidence of inequalities is emerging across a range of sectors including employment, accommodation, education and health. Discrimination in accessing other goods and services is also documented. Racist violence and crime is now recorded by An Garda Síochána who in turn can be perpetrators of racism through racial profiling and other incidents. The media is explored as a site for discrimination. Each area is discussed with reference to data on discrimination. Official sources of data refer to 2004 but complementary sources of data are also highlighted including qualitative sources and anecdotal evidence focusing specifically on the 2005 period.

IV.i Employment

Black and minority ethnic groups experience discrimination both in accessing employment and while employed. Manifestations include underemployment, poorer working terms and conditions and unequal opportunities to promotion. It should be noted that asylum seekers do not have the right to work in Ireland, a situation that many NGOs and independent research highlight as having a negative impact on integration and personal health.

The Employment Equality Act 1998 and 2004 outlaw discrimination on the grounds of 'race' and membership of the Traveller community in the area of employment²². The Equality Authority reports that the two ground relating to racism, the 'race' ground and membership of the Traveller community, dominated their case files in 2004 under the Employment Equality Act 1998 and 2004²³. 118 cases related to the 'race' ground, seven to the 'Traveller' ground and four to religious belief. The Equality Tribunal reported an increase of 46% of cases on the 'race' ground from 2003 to 2004²⁴.

49.1% of the Equality Authority case files on the ground of 'race' related to working conditions. 19.5% related to dismissal and 16.1% related to access to employment.

²² Data collected under the equality legislation provides information on discrimination in employment in Ireland across nine protected grounds, namely gender, marital status, family status, sexual orientation, religion, age, disability, 'race' and membership of the Traveller community.

²³ Any person who feels that s/he has been discriminated against can apply to the Equality Authority for information and assistance in bringing proceedings under the Employment Equality Act 1998 and 2004. However it should be noted that these are instances of casework by the Equality Authority and consequently do not necessarily refer to legal cases. The Equality Authority offers legal assistance to support only a limited number of claims due to its selection criteria for representation and insufficient resources.

²⁴ Equality Tribunal, *Annual Report 2004* (Dublin: Equality Tribunal, 2005).

The number of referrals to the Labour Court under the equality legislation was 55 in 2004, this is down from 84 in 2003 representing a drop of 34.5%. This change is attributed mainly to the amendments to the legislation in 2004. Under section 46 of the Equality Act 2004 first instance jurisdiction in cases of dismissal in circumstances amounting to discrimination or victimisation was transferred from the Labour Court to the Director of the Equality Tribunal. The Labour Court still has jurisdiction to deal with appeals in such cases.

Of the 55 cases referred to the Labour Court, 'race' was the most often cited discriminatory ground accounting for 14 of the cases. Religion was cited in one case and there were no referrals under the ground of membership of the Traveller community²⁵.

Cases relating to racism have achieved significant ground in a number of aspects of law including positive duty and burden of proof. A recommendation of the Labour Court in the Campbell Catering Limited vs Rasaq case requires the imposition of a positive duty on employers in certain circumstances where difficulties might be encountered by migrant workers to ensure non-discrimination.

The Equality Authority highlights the continuing vulnerable position of migrant workers stating that this is clearly evident from their case files, settlements and recommendations in 2004. Early in 2005 exploitation of migrant workers received particular attention in the media following efforts of a number of politicians, trade unions and NGOs to highlight the issue. One key example was the claim by a socialist TD, Mr. Joe Higgins that a construction company was underpaying migrant workers. On foot of this, the government initiated an investigation into the matter. The Labour Court reports that the increase in cases under the Payment of Wages Act in 2004 was due in most part to cases brought by migrant workers²⁶. 90% of such cases were upheld.

Despite increased reports of workplace exploitation of migrant workers, it is difficult to provide quantitative data on this matter due again to lack of comprehensive and consistent data collection mechanisms. For example, the Labour Inspectorate²⁷ does not collect disaggregated data on migrant workers. Lack of information about employment rights, about equality legislation, fear and lack of faith in the system along with concerns such as cost mean that many cases go unreported and unnoticed.

²⁵ Labour Court, *Annual Report 2004* (Dublin: Labour Court, 2005).

²⁶ Ibid.

²⁷ The Labour Inspectorate is the body responsible for the monitoring of employment rights.

IV.ii Housing

Accommodation continued to be a problematic area for Black and minority ethnic groups during 2005. Complaints have been made in relation to discrimination in accessing private rented accommodation, discrimination in the allocation of local authority accommodation, racist incidents in the residential context and failure by public bodies to provide adequate accommodation including accommodation for Travellers as well as continued concern around dispersal and direct provision arrangements for asylum seekers²⁸.

The Equal Status Acts 2000 and 2004 prohibits discrimination on the grounds of 'race' and membership of the Traveller community in the provision of goods and services including accommodation. The Equality Authority report that 35 of the 105 files under the Equal Status Act 2000 and 2004 relate to accommodation representing a major increase since 2003 where only three cases were in this area. The majority of these files (69%) relate to the 'race' ground and membership of the Traveller community. 17 of the 24 files relating to public housing involve the grounds of 'race' and membership of the Traveller community.

Lack of accommodation including appropriate accommodation for Travellers is a serious issue, impacting also on Travellers' educational and health status. The National Traveller Accommodation Consultative Committee (NTACC) carried out a review of the operation of the housing (Traveller) Accommodation Act 1998. While Department of Environment figures show the number of Traveller families living on the roadside is down from 1 200 in 1999, they still remain at 788 families living on the roadside. Department figures indicate that there are a total of 1,463 families living without permanent accommodation, that is 22% of the total estimated number of Travellers in Ireland.

The figures reveal an unacceptable number of families still without satisfactory accommodation despite the five years since the adoption of local Traveller accommodation programmes. In light of this failing, a number of Traveller organisations have called for the establishment of a national Traveller accommodation agency. The NTACC also recommends the establishment of such an agency.

The Habitual Residency Condition²⁹ introduced by the Government in May 2004 continues to cause problems for migrants, rendering a number homeless. The Homeless Agency reported a trend in mid to late 2005 in the increasing use of

²⁸ See for example, NCCRI, *Racist Incidents Report January – July 2005*, (Dublin: NCCRI, 2005), available at www.nccri.ie accessed 14 February 2006.

²⁹ The Habitual Residency Condition was introduced through the Social Welfare (Miscellaneous Provisions) Act 2004. This means that a person, including those from Accession States, must have worked and contributed to PRSI (contributory insurance scheme) payments for a period of two years before they can access some forms of social welfare benefits including social housing and rent allowance.

homeless service by non-Irish nationals generally from the EU accession States³⁰.

Organisations working with migrants report exploitation of migrant workers in some instances where accommodation is provided by the employer. Others are deducting exceptionally high amounts from employees' salaries to cover accommodation. While there are certain Health and Safety standards to be adhered to, the situation around deductions for 'living in' arrangements is unclear.

The Reception and Integration Agency (RIA) provides accommodation through a policy of dispersal and direct provision for approximately 6,100 people seeking asylum in 75 accommodation centres spread over 24 counties. A significant proportion of residents in these centres are children, primarily in the pre-school age group³¹. Unaccompanied minors seeking asylum are also largely accommodated in hostel type accommodation. In February the *Irish Examiner* reported that direct provision centres that house asylum seekers would be inspected from April as a result of complaints by asylum seekers concerning lack of baby food supplies and meals, cramped conditions and verbal assaults.

Anti-racist and refugee organisations continue to lobby the government against this policy, particularly as changes made in 2005 have created conditions that NGOs have compared to detention³². Unaccompanied minors in the asylum process are also accommodated in accommodation centres. In 2005 the Minister of State for Health and Children launched guidelines around the care of unaccompanied minors in such centres. However, as guidelines there is no obligation that they be enforced.

IV.iii Education

As reported in the *2004 Shadow Report*, there are no baseline figures to assess outcomes for Black and minority ethnic groups from the Irish education system. While some data is collected, it is inconsistent. For example, post primary schools collect data on country of origin whereas primary schools do not. At primary school the focus for the collection of data is on language needs rather than nationality or other factors relating to racism.

There is therefore no quantifiable means of assessing the extent to which existing education strategies are benefiting minorities, nor of effectively evaluating new strategies. The National Office for Equity of Access to Higher Education has highlighted the lack of essential student data as a factor in

³⁰ Homeless Agency News Release 14 September 2005.

http://www.homelessagency.ie/noticeboard/display_news.asp?news_id=25, accessed 7 March 2006.

³¹ Reception and Integration Agency Press Release, 'Minister launches guidelines',

http://www.ria.gov.ie/whats_new/?id=39, accessed 4 March 2006.

³² *Irish Independent* 25th January 2005.

hampering progress³³. Not knowing how many students from under-represented groups, including minority ethnic groups, enter higher education, complete course of study or receive an award makes it difficult to assess progress or to make the case for continued or increased resources to achieve equity.

While at a national and departmental level there is some recognition of a need to provide structures to support children from minority ethnic groups and their parents, in practice relatively little has been achieved at implementation level to date³⁴. For the most part intercultural issues are left to individual schools. While there are a number of good initiatives within particular schools, this is somewhat ad hoc.

Another institutional problem that will also need to be resolved at a national level is the Constitutional requirement that schools be denominational. This clearly causes problems for religious minorities. The majority of schools in Ireland are Catholic with a small number of Islamic and Protestant schools. There are also multi-denominational schools but as demand increases and supply remains low, access to multi-denominational schools can be an issue in certain areas. In its Observations, CERD encourages promotion of the establishment of non-denominational or multi-denominational schools in view of the intersectionality of racial and religious discrimination.

Cases relating to educational establishments represent a significant proportion of the casework of the Equality Authority, second only to cases relating to licensed premises. 74 of the 509 (approx 14.5%) case files handled by the Equality Authority under the Equal Status Act 2000 and 2004 related to educational services and educational establishments. Of these, 26 (approximately 35%) relate to the grounds of 'race' and membership of the Traveller community. Eight cases relate to the 'race' ground, 18 relate to membership of the Traveller community. There were also five cases relating to religious belief.

The *Irish Independent*³⁵ revealed that according to a survey, many Travellers hid their identity in school for fear that they would not be accepted by other pupils. Almost all the Travellers questioned reported that they experienced discrimination from teachers and pupils in both primary and secondary schools. In June the same newspaper reported that a new report indicated that hundreds of Roma children do not attend school because of a fear of discrimination. An 11-year-old child said it was difficult to make friends at school and that he was teased about his ethnicity. Such findings are supported by other sources including NGOs and trade unions. John Carr, General Secretary of the Irish National Teachers Organisation (INTO), has spoken out on the importance of

³³ National Office for Equity of Access to Higher Education, *Annual Report 2005* (Dublin: National Office for Equity of Access to Higher Education, 2006). The Annual Report documents progress in the first year of delivering the National Action Plan for Equity of Access to Higher Education.

³⁴ This conclusion is drawn from a piece of research on how public authorities provide services to minority ethnic groups in Northern Ireland, Republic of Ireland and Scotland in 2005.

³⁵ *Irish Independent* April 2005.

education against racism. Referring to anecdotal evidence provided by teachers that children are developing strong racist attitudes, he said that there is a duty to educate against racism³⁶.

Albeit that progress is slow, supports are improving at primary and post-primarily levels. However, there is less debate in the context of early years education and lifelong learning. There is little provision of training for early years educators on anti-bias or anti-racist approaches to education³⁷. In the area of lifelong learning, there is little commitment for the provision of education to minority ethnic groups including immigrants beyond the formal primary and post-primary educational system. The change in the equality legislation means that discrimination on the basis of nationality in higher education establishments is allowed.

Three key developments in the area of education in 2005 are the inclusion of an intercultural strategy in education in the context of the NPAR, the launch of an Action Plan for Educational Inclusion, Delivering Equality of Opportunity in Schools (DEIS)³⁸ and the publication of Intercultural Guidelines for primary schools³⁹. The Traveller Education Strategy which was due to be published in 2005 has not yet been published but is expected shortly.

IV.iv Health

As indicated in the *2004 Shadow Report* and as evident in the area of education, it is difficult to paint a clear picture of the health status of Black and minority ethnic groups and the discrimination they experience in health care due to a lack of available data.

Despite an increase in ethnic diversity of service users (and providers⁴⁰), there has been little change in healthcare structures or in service delivery to reflect a mainstreaming of the specific needs of minority ethnic groups. Similar to the educational context, there are some instances of innovative and good practices but little evidence of a systematic approach to an intercultural health care.

³⁶ John Carr was speaking at City Bridges Conference in Dundalk, Co. Louth, 10 October 2005.

³⁷ Éist, *Submission to CECDE on Quality in Early Childhood Care and Education*, (Dublin, Pavee Point, 2004).

³⁸ The focus, however, is largely on educational disadvantage of local communities rather than communities of interest.

³⁹ The publication was produced by the National Council for Curriculum Assessment (NCCA) and aims to support teachers, school management and other members of the school community in developing a more inclusive classroom environment and to provide children with the knowledge and skills they need to participate in the multicultural Ireland of today. Every primary school teacher in the country has received a copy of the guidelines. However, without a comprehensive intercultural policy at national level which includes an element of obligation and complementary supports for educators including training, the guidelines are unlikely to reach their full potential.

⁴⁰ Nurses and other medical professionals have been actively recruited from outside the EU particularly from the Philippines. Non-Irish medical professionals make a significant contribution to Irish health care and the system is currently reliant on them.

There is anecdotal evidence of members of minority ethnic groups effectively being denied access to health care as members of minority ethnic groups, particularly Travellers and asylum seekers, are actively discouraged by some General Practitioners (GPs). When services are accessed there can still be barriers including lack of adequate translation services or culturally sensitive provision and in some instances, the lack of availability of female doctors for female patients where one is required.

There is also evidence of overt expressions of racism evident within the health care system through attitudes of services providers and other patients. The health care system is under considerable strain for a range of structural reasons and underwent significant reform in 2004. However, minority ethnic groups, particularly immigrants, have been made scapegoats in the public discourse including the media where they have been blamed for the strain on the system, despite the fact that the system is clearly dependent on immigrants as service providers. A recent study carried out in 2005 for example reveals that some health service providers feel that increasing ethnic diversity is putting pressure on the health service. However, what is often not considered is the fact that the health service is quite dependent on migrant workers. Also, as migrant workers generate revenue, if they were considered beyond merely economic units this contribution would be put into planning around their service needs.

The Equality Authority report that their casework activity in 2004 included 30 cases against the health boards⁴¹, 12 of which related to the 'race' ground and two of which related to membership of the Traveller community.⁴²

The 2005 work plan for the Working Group on Equality Proofing, established under the Programme for Prosperity and Fairness (PPF), identified a number of main areas for action including the rolling out in the Public Service of the learning process from equality/integrated proofing exercises. One action carried out was an Equal Status Review in the North Western Health Authority. This follows another regional initiative in 2004 when the Eastern Regional Health Authority launched a Regional Health Strategy for Ethnic Minorities. The Equal Status Review is an important start and highlights a number of areas for concern⁴³.

Good practice in the area of health is being facilitated through an initiative of the Combat Poverty Agency (CPA) 'Building Healthy Communities 2005-2007' Programme⁴⁴. Under this Programme, Galway Refugee Support Group has received funding for their project, 'Effective Participation for Asylum Seekers and

⁴¹ This data relates to 2004, a year which saw significant reform of the health service. Health boards no longer exist and their replacement, Health Service Executive Areas, are referred to as such elsewhere in this report.

⁴² Equality Authority, *Annual Report 2004* (Dublin: Equality Authority, 2005)

⁴³ For an overview of the Equal Status Review, see Equality Authority *Equality News Summer 2005* (Dublin: Equality Authority, 2005).

⁴⁴ Combat Poverty Agency, 'Building Healthy Communities', http://www.combatpoverty.ie/downloads/activities/programmes/BuildingHealthyCommunities/2006_BHC_FundedInitiatives2005-2007.pdf accessed 11 March 2006.

Refugees', which aims to build the capacity of refugees and asylum seekers to identify and voice their concerns through the HSE consultative structures. Cairde⁴⁵ also received funding to set up a National Ethnic Minority Health Forum. Primary health care is an area where there has been notable success. The contribution made by Pavee Point's Travellers Primary Health Care project has been widely recognised including by the Minister for Health and Children⁴⁶.

IV.v Policing and racial profiling

An Garda Síochána published the Garda Human Rights Audit on 31 March 2005. The Audit concludes that there is institutional racism within An Garda Síochána in their dealing with certain groups in the community and an absence of organisational structures to deal with racism. It highlights the lack of monitoring of the use and impact of police powers on different communities within society and the fact that the PULSE system⁴⁷ is not widely used by members. It reveals a lack of information about racist incidents and the assumption that everyone should be treated the same, naming these as issues of concern. It also notes particularly negative attitudes of Garda members of the Traveller community and Nigerian community.

The area of immigration is the site for many of the instances of racism within policing and an area where the Gardaí have been given new powers through recently enacted legislation including the Immigration Act 2004. The question of immigration and the role of the Gardaí was raised in the Garda Human Rights Audit. The Minister for Justice stated that this would be considered in the later published Immigration and Residence Discussion Document but that he foresaw the Gardaí would continue to play an important role in this area⁴⁸.

Amnesty International has called on the Department of Justice, Equality and Law Reform to face up to its responsibilities, claiming that while on the one hand it purports to be reforming the Garda, on the other it continues to enact legislation that allows for the infringement of human rights without accountability⁴⁹. Related areas of concern include procedures around deportation and detention including conditions in detention facilities. Concern has also been expressed by NGOs and others including politicians, about a potential conflict of interest given that a substantial number of ethnic liaison officers⁵⁰ are also members of the Garda

⁴⁵ Cairde is a NGO working to reduce health inequalities amongst ethnic minorities.

⁴⁶ Health Service Executive and Pavee Point, *A Review of Travellers' Health using primary care as a Model of Good Practice*. (Health Service Executive and Pavee Point 2005).

⁴⁷ PULSE is the crime reporting system of An Garda Síochána.

⁴⁸ The Minister was responding to a Parliamentary Question posed by Ciaran Cuffe, TD with the Green Party. <http://www.ciarancuffe.com/Questions/2005/Q050412J.HR.Audit.htm>, accessed 11 March 2006.

⁴⁹ Amnesty International (Irish Section), 'Garda human rights plans unveiled. Now what about government?' <http://www.amnesty.ie/content/view/full/3654/>, accessed 11 March.

⁵⁰ An initiative of the Garda Racial and Intercultural Office was the appointment of Ethnic Liaison Officers (ELOs) whose task, along with their other community relations tasks, is to establish positive relations with

National Immigration Bureau (GNIB). However, the Minister for Justice has stated that he does not consider such a conflict of interest to exist.

Racial profiling is a significant issue and facilitated through immigration legislation. NGOs have long raised concerns about racial profiling at points of entry⁵¹. The Islamic Cultural Foundation reported a case where two Muslim men were stopped by an immigration officer. Asking why they had been singled out, they were informed that it was a “random check” and due to their appearance as Muslims as both of them were bearded⁵². In its concluding observations, CERD notes the reported occurrence of instances of discriminatory treatment against non-Irish nationals entering Ireland during security checks at airports and encourages the state to review its security procedures and practices at entry points with a view to ensuring that they are carried out in a non-discriminatory manner⁵³.

Recent changes in immigration legislation⁵⁴ requiring non-Irish nationals to carry identification⁵⁵ have resulted in racial profiling. Anecdotal evidence shows that people are stopped and asked to produce documents on the basis of racial profiling. The NCCRI reports a number of incidents between members of minority ethnic communities, including the Muslim community, where racial profiling was evident. In one incident reported to the NCCRI, explicit reference was reported to have been made between the victim’s ethnicity and terrorists⁵⁶.

A critical issue is the lack of appropriate complaints mechanisms for reporting and monitoring cases of racism by the Gardaí. As the Human Rights Audit points out, there is an absence of procedures for monitoring racism within the force. The passing of An Garda Síochána Act 2005 allowed for the establishment of a Garda Ombudsman Commission. However, the Ombudsman is not expected to commence duties until 2007. CERD expressed regret that information about complaints against the Gardaí had not been included in the Report from the Government and invited inclusion of such figures in the next report⁵⁷. It should be noted that the activities of An Garda Síochána are not covered under the equality legislation.

Positive developments in policing in 2005 include an initiative to recruit Gardaí from Black minority ethnic communities. In order to achieve a more representative force, indirect barriers such as the previous requirement of a

minority ethnic communities and their representatives. There are now close to 200 ELOs within An Garda Síochána.

⁵¹ E.g Irish Refugee Council, NGO Alliance.

⁵² NCCRI, *Racist Incidents January – June 2005* (Dublin: NCCRI, 2005).

⁵³ Concluding Observations on Ireland, Report of the Committee for the Elimination of All Forms of Racial Discrimination, (CERD, 10 March 2005), para. 16.

⁵⁴ Immigration Act 2004 (Dublin: Government Publications, 2004).

⁵⁵ Unlike some other EU Member States, the Irish State does not require Irish nationals to carry identification.

⁵⁶ *Ibid.*

⁵⁷ Concluding Observations on Ireland, Report of the Committee for the Elimination of All Forms of Racial Discrimination, (CERD, 10 March 2005), para. 17.

knowledge of the Irish language have been removed. Information workshops on application and interview processes were also held in an effort to target and inform those who might be interested in joining An Garda Síochána.

IV.vi Racist violence and crime

Racist crime is primarily dealt with through a range of legislation including Criminal Justice (Public Order Act) 1994, the Non-Fatal Offences Against the Person Act 1997, the Criminal Damages Act 1991 and the Prohibition of Incitement to Hatred Act 1989. There is no provision for aggravated sentencing on the ground of racism in Irish law and the Incitement to Hatred Act has long been considered ineffective.

The NPAR establishes a committee under the theme 'Protection' and Redress against Racism⁵⁸. The committee has commissioned a piece of research to consider effective legislation against hate crime. The terms of reference for the research require it to consider three key areas including the effectiveness of current legislation, the concept of 'hate' and aggravated sentencing. The research is expected to be completed by June 2006. The Incitement to Hatred Act has been under review since September 2000 but no conclusions have yet been drawn. Prior to the commencement of the review, no case had been successful. Since that date, seven of the 18 cases brought under the Act have been successful. The Act will be now be considered in the context of the committee's research.

The extent of racist crime can be measured through statistics from An Garda Síochána, NCCRI's Racist Incident Reporting System and the media. However, underreporting is a significant issue⁵⁹. According to An Garda Síochána, 85 offences with a racist motive were recorded in 2005, an increase on the 66 offences recorded in 2004. This compares to 81 offences in 2003, 102 in 2002, forty three in 2001, 65 in 2000, and 12 in 1999. 2003 was the first full year in which racially motivated incidents were clearly defined to members of the force and recorded through PULSE.

PULSE statistics show that the most common forms of incidents were criminal damage, public order offences and assault (see table 1).

⁵⁸ NCCRI Spectrum (Dublin: NCCRI, July 2005).

⁵⁹ Underreporting is evident in many jurisdictions. In Ireland a victimisation survey carried out by the CSO in July 2004 showed that 74% of violent theft victims who were non-EU nationals did not report the crime to the Gardaí. Central Statistics Office, 'Module on Crime Victimisation Q4 1998 and Q4 2003', released 29 July 2004'.

Table 1: Offences recorded and detected where there was a racist motive recorded for the years 2004 and 2005* Source: An Garda Síochána.

Offence	2005		2004	
	Recorded	Detected	Recorded	Detected
Assault	18	11	20	6
Burglary	0	0	1	0
Criminal Damages	32	10	19	2
Public Order Offences	29	21	21	17
Possession of Offensive Weapon	1	1	3	2
Sexual Assault	0	0	1	0
Theft	0	0	1	1
Firearm Offences	2	1	0	0
Murder	1	1	0	0
Robbery	2	0	0	0

* Figures provided are provisional/operational and liable to change

NCCRI data and media reports reveal that 2005 saw ongoing racist violence and crimes mostly resulting in property damage and including some physical assaults⁶⁰. Examples of such incidents include several attacks on Chinese fast food delivery drivers in late 2005. A significant outcome from one case was the sentencing of a man to 20 months imprisonment for spray painting swastikas on Dublin synagogues.

Media coverage of the trial of Pádraig Nally for the death of John Ward, a Traveller, revealed the level of tolerance for the racism that persists against the Traveller community across society including in the media. Mr. Nally was convicted of manslaughter in 2005.

IV.vii Access to goods and services in the public and private sector

The Equal Status Acts 2000 and 2004 outlaw discrimination in the provision of goods and services across nine grounds. The two grounds relating to racism, namely the 'race' ground and membership of the Traveller community dominated the case files of the Equality Authority in 2004⁶¹.

The NCCRI also recorded a number of incidents relating to the provision of goods and services in both the public and private sectors. The CSO survey on equality shows that the most common type of discrimination relates to using the services of banks, insurance companies or financial institutions. Discrimination

⁶⁰ NCCRI, *Racist Incidents Report, January 2005-July 2005* (Dublin: NCCRI, 2005).

⁶¹ Equality Authority, *Annual Report 2004* (Dublin: Equality Authority, 2005).

in shops, pubs and restaurants also ranked amongst the top four most frequently reported⁶².

A number of the functions of public bodies are exempt from the provisions of the equality legislation. Particularly noteworthy and problematic in this context are exemptions relating to the provision of public services to certain groups of non-Irish nationals. While nationality was covered in the Equal Status Act 2000, exceptions were introduced in the Equality Act 2004. The 'Race' Directive was weaker than previously existing Irish legislation in this regard.

Prior to 2004, cases relating to discrimination in licensed premises were heard by the Equality Tribunal. In 2004 the implementation of the Intoxicating Liquor Act 2003 meant that such cases would be heard in the District Court. NGOs report that this poses a difficulty for vulnerable groups. The Equality Tribunal is more accessible than the District Court setting. Vulnerable groups had previously benefited from information provision and assistance from the Equality Authority but this service that is no longer available to them. Costs may need to be borne by the unsuccessful party which is a significant disincentive, discouraging victims of discrimination from bringing cases under the Act.

Provisions in the Equality Act 2004 mean NGOs may be able to represent claimants before the Equality Tribunal and on appeal. NGOs may also be able to make submissions in cases to the Equality Tribunal⁶³.

IV.viii Media, including the Internet

The media can play a positive and negative role in the struggle against racism. In fact, the media is a key mechanism for bringing our attention to racist incidents and crime. It is also a powerful mechanism for the promotion of positive images of Black and minority ethnic groups. The internet has been very useful to under-resourced NGOs who can use it relatively inexpensively to disseminate information. However, it can also play a negative role. In the Irish context this negative role has included scapegoating and inciting hatred against Black and minority ethnic groups through scaremongering, biased and inaccurate reporting.

In 2005 potentially inciting and evidently biased material appeared in the media. A particular case was the reporting of the Padraig Nally case. On the whole, reporting was balanced, but a number of articles caused concern and were clearly insulting and arguably inciting to hatred.

Where such incidents have occurred in the Irish context, little has been achieved in addressing them, as infrastructure to ensure responsible reporting in the media

⁶² CSO, *Quarterly National Household Survey. Equality. Quarter 4 2004*, (Dublin: CSO, August 2005).

⁶³ Barry, Eilis, 'How to use the Race Directive'. Paper presented at NGO Alliance Seminar on Anti Racism Strategies for Activists and Practitioners, March 2006.

is limited. The Prohibition to Incitement to Hatred Act 1989 is the principle piece of legislation for tackling racism in the media. However, this legislation has proven to be ineffective in this task as no case in relation to the media brought under the Act has been successful. The research, commissioned through the NPAR, on effective legislation against hate crime is awaited and has the potential to provide some protection against racism in the media. There are no provisions in the equality legislation against racist materials. The National Union of Journalists (NUJ) has a code of practice which should prevent against such reporting. However, it is not binding.

A number of NGOs and politicians have called for the establishment of a Press Council. Some work has been done in bringing such a body to fruition though the model that should be used continues to be debated. To date, Ireland does not have a Press Council.

Globally, the Internet is proving another tool for the distribution of racist materials and messages and difficult to control. Ireland is no exception in this struggle. An Internet Advisory Board has also been set up and includes representation from the NCCRI. It has recently established a hotline where racism on the internet can be reported.

V. Assessing the response

The previous section provides an overview of manifestations of discrimination across a number of key areas, demonstrating the persistent reality of discrimination and its effect on the lives of Black and minority ethnic groups in Ireland. The government has a central role to play in addressing racism. This section considers the response of the Irish government to the racism evident in Irish society and structures. Responses in the area of anti-discrimination, racist violence and racist crime are examined. Measures taken in relation to countering terrorism and protecting human rights as well as the promotion of integration and social inclusion are assessed. The observations of CERD are a key tool in the assessment of the Government's response.

Throughout the report, the lack of official sources of statistical data has been highlighted. There is a need for comprehensive, comparable and disaggregated data. This is in the interests of measuring racism and identifying where problems exist so they might be addressed. It is also critical in establishing a baseline so that progress can be measured and monitored. Without sufficient data it is difficult to show how effective government responses to racism have been. However, there are qualitative and anecdotal sources of evidence as well as some official sources of data which assist in the task.

V.i Anti discrimination

Commitments made at international level, including those made at the World Conference Against Racism Durban 2000 and through the ratification of ICERD, have been key drivers in the Irish government's anti-discrimination measures. Two key developments in this area in 2005 include the Observations of CERD on the Government's *First National Report* and the launch of the National Action Plan Against Racism (NPAR). It is also worth noting progress since the enactment of the Equality Act 2004 which the government advocates provides for the transposition of EU Directives under Article 13 of the Amsterdam Treaty including the 'Race' Directive.

The Government launched the National Action Plan Against Racism (NPAR) on 2 January 2005. The NPAR, *Planning for Diversity*, aims to provide strategic direction to combating racism and developing a more inclusive, intercultural society and emphasises the development of reasonable and common sense measures throughout. It is underpinned by an Intercultural framework built around protection, inclusion, provision, recognition and participation.

The NPAR identifies actions that have the potential to respond in part to a range of issues highlighted in section IV. However, to date only moderate achievements have been realised. NGO Alliance identify a number of strengths

in the NAPR describing it as ‘the first major Government document to address racism’ and acknowledging the including of areas highlighted by NGOs in initial consultations. It also highlights as positive the involvement of all government departments, the role of Social Partners, inclusion of community development and the involvement of a range of stakeholders on the High Level Steering Group. However, it cautions around key weaknesses including the lack of timeframes, commitment to resourcing or sanctions for government departments and agencies that fail to implement measures⁶⁴.

Many of the provisions made in the Action Plan are potentially undermined by poor legislation and policy in other areas e.g. the area of asylum and immigration. While welcoming the Plan, the Irish Refugee Council stated that the Plan was seriously undermined by other state policies. IRC highlight policies including direct provision; the prohibition of asylum seekers from taking up paid work; the non-payment of child benefit to recently arrived asylum-seeker families and new procedures which prioritise the consideration of asylum applications for asylum-seekers of certain nationalities⁶⁵.

The government advocates that the transposition of the ‘Race’ Directive was realised through the enactment of the Equality Act 2004. However, there has been a mixed response to the Act from a number of NGOs which express disappointment with how the Directives have been implemented, concerned that the Equality Act 2004 fails to fully transpose all features of the Article 13 Directives⁶⁶.

Issues of concern in terms of implementation of the law relate to costs; anonymity and the right to privacy; delay; awards; enforcement; failure to respond (particularly by public bodies); requirement to threaten litigation; mediation process; and procedures⁶⁷. The provision of exemptions has also been criticised⁶⁸. CERD urges the State to consider expanding the scope of the Equal Status Act to cover the whole range of government functions and activities including controlling duties.

While the equality bodies, the Equality Authority and the Equality Tribunal strive to be as effective as possible, there are a number of obstacles in their way, including lack of resources and inadequacies in the law itself. The drop in case load in 2004 was as a result of a decision to take on fewer cases in order to address a backlog that had accumulated⁶⁹. The CERD encouraged the

⁶⁴ NGO Alliance, *NGO Alliance Briefing Update. Events from December 2004 – February 2005* (Dublin: NGO Alliance, March 2005).

⁶⁵ Irish Refugee Council, ‘National Action Plan is seriously undermined by policies of the State’, http://www.irishrefugeecouncil.ie/press05/action_plan.html, accessed 5 March 2005.

⁶⁶ For example see Equality Coalition, *Submission on Equality Bill 2004* (Dublin: ICCL, 2004).

⁶⁷ Equality Authority, *Annual Report 2004* (Dublin: Equality Authority, 2005).

⁶⁸ Barry, Eilis, ‘The Equality Bill 2004’ in Equality Authority, *Equality News Summer 2004* (Dublin: Equality Authority, 2004).

⁶⁹ Equality Authority, *Annual Report 2004* (Dublin: Equality Authority, 2005).

government to ensure that bodies established to promote equality and human rights be sufficiently resourced.

The lack of sufficiently dissuasive redress mechanisms are also an obstacle to the effectiveness of equality bodies. The Equality Authority has expressed concern that the 2004 Act fails to ensure that the redress provided is sufficiently dissuasive. Members of the judiciary share these concerns. In a number of successful cases in 2004, the complainants were awarded the full award possible and judges made explicit their frustration that they could not award a more substantial figure⁷⁰.

While some attempts have been made to make the general public aware of racism, anti racism and the equality legislation, they have not been sufficiently effective. The CSO reports that almost one in five persons do not know their rights under Irish equality law. 42.1% of people from 'other ethnic backgrounds' reported that they had no understanding of their rights, more than twice the national average.

V.ii Racist violence and racist crime

In response to racist crime, the Government and An Garda Síochána took three key actions in 2005. In relation to developing legislation to address racist violence and crime and under the NPAR, a committee has been established on the theme 'protection'. The committee has commissioned a piece of research to consider effective legislation against hate crime. The terms of reference for the research require it to consider three key areas including the effectiveness of current legislation, the concept of 'hate' and aggravated sentencing. The research is expected to be completed by June 2006. CERD recommends that Ireland introduce a provision in its criminal law that committing an offence with a racist motivation or aim constitutes an aggravating circumstance allowing for a more severe punishment. This outcome of the research will be much anticipated as a review of the existing Incitement to Hatred Act, which commenced in September 2000, has not reached completion.

Critical in combating racist violence and crime is the capacity of the police force to recognise and take seriously offences relating to racism as well as good relations with Black and minority ethnic communities, so as to establish trust. It is also important to have a representative police force. The human rights audit of An Garda Síochána established that there is institutionalised racism in An Garda Síochána. An action plan responding to the audit has been developed and building the capability of the force to fulfil the emerging policing needs of diverse ethnic and multi-cultural communities has been identified as a Strategic Goal of

⁷⁰ For example, the Labour Court recommendation in *Campbell Catering Limited vs Rashaq Determination* Number EED 048 (re positive duty) and Labour Court recommendation *Citibank vs Massinde Ntoko Determination* Number EED 045 (re burden of proof).

the An Garda Síochána Plan 2005. They have also commenced a programme of recruitment targeting members from Black and minority ethnic communities.

While initiatives are being developed, they will need significant resourcing and commitment to ensure they are implemented satisfactorily. An Garda Síochána has had a 'Racial and Intercultural Office' since 2000, but this is very understaffed and while some anti-racism training is available at pre-service training and to Ethnic Liaison Officers (ELOs), it is neither comprehensive nor compulsory. Nor is anti-racism training readily available to other members of staff. There are ELOs around the country but approximately 20% of them are immigration officers which NGOs feel undermines ELOs capacity to develop good relations with immigrant communities.

V.iii Counter-terrorism and protection of human rights

Amnesty Ireland and ICCL are two lead organisations that have cautioned around the Criminal Justice (Terrorist Offences) Act 2002 and its application. The question of countering terror is having an impact on immigrants also through the negative slant it is giving to other areas of policy and legislation. The *Immigration and Residence Discussion Document* is clearly security conscious at the expense of other more inclusive measures.

In recent years, the powers of the Gardaí have been increased in the area of immigration⁷¹. These developments, combined with the institutional racism within the Gardaí, give rise to serious concerns around racial profiling. The CERD recommends a review of security procedures and practice at entry points to ensure they are carried out in a non-discriminatory manner. It invites the State to include data on the number of complaints against members of the Gardaí concerning discriminatory treatment and decisions made.

Ireland is party to key international measures which place protection against racism in the context of human rights protection including ICERD, CEDAW and ECHR. However, it has not signed up to a number of conventions that would guarantee rights for members of minority ethnic groups including the Convention on Migrant Workers and their Families.

The Irish Government submitted its first National Report under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in January 2005. The report was considered by the CERD at its 66th Session in March 2006. This was a key benchmark in Irish history in terms of commitments to the struggle against racism at an international level. The CERD observations and recommendations are a key tool for the assessment of the Government's response to racism in the context of human rights protections.

⁷¹ Including Immigration Act 2004.

CERD invites Ireland to envisage incorporating the Convention into its domestic legal order and recommends it to withdraw the declaration made to article 4 of the Convention believing that no compelling reasons exist. CERD also recommends that the State provide information on the conditions of detention of asylum seekers and undocumented migrants awaiting deportation. It invites the State to include data on the number of complaints against members of the Gardaí concerning complaints on discriminatory treatment and decisions made. It also encourages that the State provide adequate resources and funding to newly established institutions in the field of human rights and non-discrimination.

V.iv Integration and social inclusion of ethnic and religious minorities

The Irish government does not have a comprehensive integration policy, despite the growing immigrant population in Ireland today. Some integration initiatives and other social inclusion mechanisms have been developed. The NPAR promises to address this situation. However, the continued treatment of migrant workers as economic units, the lack of any policy on integration for asylum seekers, the deportation of Irish children of non-Irish national parents and other conflicting policies, seriously undermine any initiatives that are in place. There is also criticism that the Government is actively encouraging segregation through its accommodation policy for asylum seekers and its weak implementation of targets set for Traveller accommodation. Lack of core funding for minority ethnic led organisations and other NGOs working with minority ethnic groups is a concern.

The Government has established a reception and integration agency (RIA). Much of the focus of RIA's work has been on the reception of asylum seekers and where it has carried out integration measures their remit extends only to those who have been recognised as refugees by the State. It is government policy not to include asylum seekers in integration measures. While there is mention of possible integration measures for other migrants and some actions identified in the National Action Plan, the Employment Permits Bill still reveals a general consideration of migrant workers as economic units. The lack of guarantees around family reunification also questions how seriously integration is taken and acts as a serious barrier to integration as well as a potential violation of people's right to a family life.

Concerned about possible implications of the policy of dispersal and direct provision, CERD encourages the adoption of measures to promote asylum seekers full participation in society. It also recommends that the State consider reviewing the legislation governing work permits and envisage issuing work permits directly to employees⁷². Both the NPAR and the National Action Plan for Social Inclusion promise some positive developments in the areas of integration and social inclusion. However, much has yet to be realised and in the absence

⁷² The Employment Permits Bill 2005 provides some consideration of the permit system. However, the Bill does not allow for the issuing of permits directly to employees.

of targets in the NPAR particularly, it will be difficult to measure progress or ensure its implementation.

Engagement with civil society is critical to the struggle against racism. The Government has engaged in consultation around initiatives such as NPAR but is criticised for failing to consult on other actions including on the First Report to CERD. While submissions were invited on the Equality Bill 2004, a number of significant recommendations were not taken on board. The development of an Immigration and Residence Bill is critical at this time. Submissions from NGOs were invited on the *Immigration and Residence Discussion Document 2005*. It is hoped that the advice of NGOs will be taken on board. However, past experience leaves one somewhat cautious.

While there is consultation, it can be somewhat ad hoc while policies or laws are being formulated but not at further stages in the process or around monitoring implementation. In other instances it appears the government is consulting with NGOs on how a policy might be implemented rather than on the substance of the policy⁷³.

There is a commitment by the government to have dialogue with NGOs and engage with civil society. However, a number of NGOs find consultation resource intensive. If engagement with civil society is to be realised, the government will need to demonstrate that there are outcomes for the NGOs which justify the resources they invest in the process. Government will also need to provide core funding to Black and minority ethnic led organisations and other NGOs representing and supporting Black and minority ethnic groups including those working with Travellers, refugees, asylum seekers and migrant workers.

⁷³ A previous example of this is where NGOs were consulted around dispersal and direct provision. No NGO supported the policy but it was still implemented.

VI. Conclusion

The report provides an overview of racism in Ireland in 2005 and responses made by the Government to address it, highlighting key gaps in terms of responses. This final section highlights three key areas that were critical to the struggle against racism, namely data collection and equality proofing, immigration and residence and the National Action Plan Against Racism. It concludes with a reflection on the significance of civil society responses.

Throughout the report, the lack of official sources of statistical data has been highlighted. There is a need for comprehensive, comparable and disaggregated data. This is in the interests of measuring racism and identifying where problems exist so they might be addressed. It is also critical in establishing a baseline so that progress can be measured and monitored. Without sufficient data it is difficult to show how effective government responses to racism have been.

A discussion document on immigration and residence in Ireland was launched in April 2005. The document outlines policy proposals for an Immigration and Residence Bill. NGOs were invited to make submissions to Government on the document. The document covers areas such as visas, pre-entry clearance, border controls, economic and study migration, residence status and permits, removals and administration of services. NGOs have highlighted the need for debate on these issues and urge further consultation on specific areas proposed in the document. The document puts emphasis on secondary legislation but NGOs have highlighted the need for primary legislation as the preferred vehicle⁷⁴. The Immigration and Residence Bill is expected to be published in 2006.

The Government launched the National Action Plan Against Racism (NPAR) on 27 January 2005. The NPAR, *Planning for Diversity*, aims to provide strategic direction to combating racism and developing a more inclusive, intercultural society and emphasises the development of reasonable and common sense measures throughout. It is underpinned by an Intercultural framework built around protection, inclusion, provision, recognition and participation.

The NPAR identifies actions that have the potential to respond in part to a range of issues highlighted in section IV. To date, moderate achievements have been realised. NGO Alliance identify a number of strengths in the NAPR, describing it as 'the first major Government document to address racism' and acknowledging the including of areas highlighted by NGOs in initial consultations. However, it

⁷⁴ Further discussion can be found in the following documents. Amnesty International (Irish Section) *Submission to the Department of Justice Equality and Law Reform on Immigration and Residence in Ireland*, www.amnesty.ie, accessed 9 March 2006. Migrants Rights Centre Ireland (MRCI), *Submission to the Department of Justice Equality and Law Reform on Immigration and Residence in Ireland* www.mrci.ie, accessed 2 March 2006.

cautions around key weaknesses including the lack of timeframes, commitment to resourcing and sanctions for government departments and agencies that fail to implement measures⁷⁵. Many of the provisions made in the Action Plan are potentially undermined by poor legislation and policy in other areas including the area of asylum and immigration.

The response of civil society to racism has been significantly facilitated by civil society organisations. 2005 was an encouraging year as there was clear evidence of the effect of their response and positive outcomes from it, demonstrated through the observations of CERD and in the NPAR. While NPAR has received criticism, it is acknowledged by NGOs that it refers to areas highlighted by NGOs in initial consultations. The CERD observations are a message to NGOs that they were listened to as the recommendations echo much of what NGOs had said in Shadow Reports submitted. However, NGOs working in the area of racism are under considerable strain in terms of resources. The Government has made commitments to social dialogue and will need to provide core funding to Black and minority ethnic led organisations and other NGOs representing and supporting Black and minority ethnic groups including those working with Travellers, refugees, asylum seekers and migrant workers if work and progress are to continue.

⁷⁵ NGO Alliance, *NGO Alliance Briefing Update. Events from December 2004 – February 2005* (Dublin: NGO Alliance, March 2005).

VII. Bibliography

Amnesty International (Irish Section) *Submission to the Department of Justice Equality and Law Reform on Immigration and Residence in Ireland*, www.amnesty.ie, accessed 9 March 2006

Amnesty International (Irish Section), 'Garda human rights plans unveiled. Now what about government?' <http://www.amnesty.ie/content/view/full/3654/>, accessed 11 March 2006

Barry, Eilis, 'Equality Bill 2004' in Equality Authority, *Equality News Summer 2004* (Dublin: Equality Authority, 2004)

Barry, Eilis, 'How to use the Race Directive'. Paper presented at NGO Alliance Seminar on Anti Racism Strategies for Activists and Practitioners, March 2006

Cairde newsletter, <http://www.cairde.ie/images/Newsletter.pdf>, accessed 11 March 2006

Central Statistics Office, 'Module on Crime Victimization Q4 1998 and Q4 2003, released 29 July 2004', (Dublin: CSO, 2004)

Central Statistics Office, *National Census 2002 – Irish Traveller Community*, (Dublin: CSO, 29 January 2004)

Central Statistics Office, *Quarterly National Household Survey. Equality. Quarter 4 2004* (Dublin: Central Statistics Office, August 2005)

CERD, Concluding Observations on Ireland, Report of the Committee for the Elimination of All Forms of Racial Discrimination, (CERD, 10 March 2005) CERD/C/IRL/CO/2

Combat Poverty Agency, 'Building Healthy Communities', http://www.combatpoverty.ie/downloads/activities/programmes/BuildingHealthyCommunities/2006_BHC_FundedInitiatives2005-2007.pdf accessed 11 March 2006

Cosgrave, Catherine, *Summary Analysis and Initial Response to the Government's Proposals for an Immigration and Residence Bill* (Dublin: Immigration Council of Ireland, 2005)

Department of Education and Science, *Delivering Equality of Opportunity in Education*, (Dublin: Government Publications, 2005)

Dept. of Justice, Equality and Law Reform, *Immigration and Residence Discussion Document*, available at

[http://www.justice.ie/80256E010039C5AF/vWeb/flJUSQ6BDEMU-en/\\$File/discussion.pdf](http://www.justice.ie/80256E010039C5AF/vWeb/flJUSQ6BDEMU-en/$File/discussion.pdf), accessed 2 March 2006

Éist, *Submission on Quality in Early Childhood Care and Education* (Dublin: Pavee Point, 2004)

Equality Authority *Equality News Summer 2005* (Dublin: Equality Authority, 2005)

Equality Authority, *Equality News Summer 2005*, (Dublin: Equality Authority, 2005)

Equality Coalition, *Submission on Equality Bill 2004* (Dublin: ICCL, 2004)

Equality Tribunal, *Annual Report 2004* (Dublin: Equality Tribunal, 2005)

FÁS, *Irish Labour Market Review 2005* (Dublin: FAS, 2006)

Health Service Executive and Pavee Point, *A Review of Travellers' Health using primary care as a Model of Good Practice*. (Dublin: Health Service Executive and Pavee Point, 2005)

Homeless Agency 'News Release 14 Sept 2005',
http://www.homelessagency.ie/noticeboard/display_news.asp?news_id=25,
accessed 7 March 2006

Human Rights Commission, *Position Paper on Family Reunion* (Dublin: Human Rights Commission, October 2005)

Ionann Management, *An Garda Síochána Human Rights Audit* (Ionann: 2004) released 31 March 2005

Ireland, *First National Report as required under Article 9 of the Convention on the legislative, judicial, administrative or other measures adopted to give effect to the provisions of the Convention* Prepared by the Department of Justice, Equality and Law Reform (Dublin: Government Publications, 2003)

Ireland, *Ireland's Combined Fourth and Fifth Reports Under the UN Convention on the Elimination of All Forms of Discrimination Against Women* (Dublin: Government Publications, 2003)

Ireland, *Planning For Diversity*, (Dublin: Government Publications, 2005)
Irish Refugee Council, 'National Action Plan is seriously undermined by policies of the State; http://www.irishrefugeecouncil.ie/press05/action_plan.html,
accessed 5 March 2005

Irish Refugee Council, *Statistical Review 2005* (Dublin: Irish Refugee Council, 2006)

Kelly, Mark, *Immigration-related detention in Ireland* (Dublin: Human Rights Consultants, November 2005)

Labour Court, *Annual Report 2004* (Dublin: Labour Court, 2005)

Lesovitch, Louise, *Roma Educational Needs in Ireland*, (Dublin: City of Dublin VEC, 2005)

Migrants Rights Centre Ireland, *Submission to the Department of Justice Equality and Law Reform on Immigration and Residence in Ireland* www.mrci.ie, accessed 2 March 2006

National Office for Equity of Access to Higher Education, *Annual Report 2005* (Dublin: National Office for Equity of Access to Higher Education, 2006)

NCCA, *Intercultural Education in Primary School: Guidelines for Schools*, (Dublin: NCCA, 2005)

NCCRI, *How Public Authorities Provide Services to Minority Ethnic Groups, Northern Ireland, Republic of Ireland, Scotland. Emerging Findings Discussion Paper* (Dublin: NCCRI, 2006)

NCCRI, *Racist Incidents Report January – July 2005*, (Dublin: NCCRI, 2005), available at www.nccri.ie, accessed 14 February 2006

NCCRI, *Spectrum* (Dublin: NCCRI, July 2005)

NGO Alliance, *NGO Alliance Briefing Update. Events from December 2004-February 2005* (Dublin: NGO Alliance, March 2005)

NGO Alliance, *NGO Alliance Shadow Report in Response to the Irish Government's First National Report to CERD under the United Nations International Convention on the Elimination of All Forms of Racial Discrimination*, (Dublin: NGO Alliance, 2004)

Pavee Point, *Irish Traveller Shadow Report*, (Dublin: Pavee Point, 2005)

Reception and Integration Agency Press Release, 'Minister launches guidelines', http://www.ria.gov.ie/whats_new/?id=39, accessed 4 March 2006
Second Implementation Report on the Task Force on Travellers (Dublin: Government Publications, 2005)

ANNEX: Overall Assessment of Directive 2000/43/EC

- ⊖ Not yet implemented
- Partial implementation
- Fully implemented

Article	Provision	Implementation Status	Comment
2	Concepts		
	Direct discrimination	●	
	Indirect discrimination	○	The Directive defines indirect discrimination as occurring where 'an apparently neutral provision, criterion or practice <i>would put</i> persons of a racial or ethnic origin at a particular disadvantage' whereas in Irish law only provisions which ' <i>put</i> persons at a disadvantage are covered.
	Harassment	●	
	Instruction to discrimination	●	
3	Scope		
	Employment	○	Largely implemented, one area of concern is the fact that in Irish law an employer can

			discriminate in hiring people to work in the private home.
	Vocational training	•	It is regrettable that fewer protections are provided since the transposition of the Directive. The law now allows for discrimination in vocational training to certain non Irish nationals.
	Working conditions	•	
	Membership of organisations	•	
	Social protection	•	
	Social advantages	•	
	Education	•	While the Directive does not cover difference of treatment on nationality, it is regrettable that in the process of transposing the Directive, protections in the area of education to certain non-Irish nationals were reduced.
	Goods and Services	○	

4	Exceptions for genuine and determining occupation requirements	Yes	
5	Government led positive action measures	Yes	
6	Anti-discrimination goes beyond the provision of the Directive	No	
7	Remedies available	○	Available remedies are limited.
	NGO participation in complaints procedures	○	
8	Application of the shift in the burden of proof	●	
9	Victimisation	●	
10	Government dissemination of information	●	While information is disseminated, it has not been particularly effective. A CSO survey on equality conducted in 2004 shows that 42.1% of people from 'other ethnic backgrounds' are not aware of their rights under the equality legislation.
11	Social dialogue on anti-discrimination	●	
12	Government dialogue with NGOs	○	
13	<u>Functions of the Equality body</u>		
	Provide assistance to victims	●	Criteria and resource constraints limit the number of cases the Equality Authority can support

			however
	Conduct surveys concerning discrimination	⊖	
	Publish reports	•	
14	Review of existing law to ensure that they are compliant with the Directive	•	There is scope to review existing law but this is only in an advisory role.
15	Effective and dissuasive sanctions	○	The Equality Authority has highlighted the lack of effective remedies.